Supreme Court, U.S.
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No. 98-6060

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

DANIEL LEON CARLSON,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to
the Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QESTIONS PRESENTED

Should a Certificate of Appealability have issued from the District or Sixth Circuit Court of Appeals for violation of Petitioner's Sixth Amendment rights, including, but not limited to ineffective assistance of counsel, prosecutoral misconduct and due process violations?

Did the government prove in any way, other than a guilty plea induced by ineffective assistance of counsel, that petitioner knew, when guns were purchased, that they were in fact stolen, in violation of 18 USC § 922(j)?

Did the government prove, in any way other than a guilty plea induced by ineffective assistance of counsel, that Petitioner knew that one of the 155 total guns had an obliterated serial number in violation of 18 USC § 922(k)?

Did the government continue to violate petitioner's rights by charging and convicting Petitioner even though there was an absence of jurisdiction pursuant to Title 5 using the parallel table of authorities and rules as implementing authority as required by the Federal Register Act?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Daniel Leon Carlson, pro se Petitioner herein, with the assistance of "jailhouse counselors" moved the district court of Western Kentucky at Louisville, to vacate, correct and set aside Petitioner's sentence imposed pursuant to erroneous guilty plea.

In addition to the erroneous guilty plea, Petitioner also alleged ineffective assistance of counsel, a violation of the Sixth Amendment to the Constitution. The particulars of this ineffective assistance of counsel are numerous, however, your Petitioner will only list a small number. First and foremost is the fact that Petitioner's attorney, Mr. Cox, allowed and even coerced Petitioner into an un-in-

formed guilty plea to charges that he either knew, should have known, or through proper due diligent research would have found out that the charges against Petitioner could not possibly hold to the close scrutiny of a trial. By not properly researching the statutes, Mr. Cox made a tragic error at the sentencing hearing of June 25, 1996. Looking to the transcripts of this hearing, Mr. Cox states: "There is no question about his guilt." Had Mr. Cox accomplished the required research, he would have found that the proper way to represent Petitioner was at trial, this due to the fact that his research would have shown that your Petitioner could not be convicted of Count 1, a violation of 18 USC § 922(J) or Count 2, a violation of 18 USC § 922(k). As for Count 3, there is such a convolution of statutes charged in this misdemeanor that a technical violation could have occurred. Your Petitioner's main concerns are Count 1 and Count 2. One last example that supports Petitioner's ineffective assistance of counsel claim, a violation of the Sixth Amendment is that this was not the proper jurisdiction and venue for these charges. Mr. Cox, being trained in law, either knew, should have known or through diligent research found out that the Assistant United States Attorney (AUSA) had no authority or jurisdiction to bring these charges against the Petitioner in violation of the Petitioner's due process rights. A quick look at the Parallel Table of Authorities and Rules will show that none of the charges filed have implementing authority as required by the Federal Register Act and therefore, they only apply to government agencies and government employees. It does not matter how much the government wishes this was not so, or how much they try to claim this notion is frivolous, it still remains part of the process and must be dealt with.

The fact that both Mr. Cox, Petitioner's attorney, and Mr. Schwartz, the AUSA have completed law school and practiced for a number of years, fuels the fact that both men had the proper training to know or through proper

due diligent research (within their trained ability) should have found out the above facts. For these reasons, ineffective assistance of counsel, prosecutoral mis-conduct and violations of due process are all in violation of your Petitioner's Sixth Amendment rights under the Constitution of the United States. Petitioner prays that this Honorable Court will continue to adopt the language in *Haines* v. *Kerner,* 404 U.S. 519, 30 L.Ed.2d. 652, 92 S.Ct. 594, and liberally construe this motion on its merits no matter how inartfully it is submitted.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion for the United States Court of Appeals appears at APPENDIX A and is unpublished.

The opinion for the United States district court appears at APPENDIX B and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 24, 1998.

A timely Petition for re-hearing was denied by the United States Court of Appeals on December 9, 1998, and a copy of the order denying re-hearing appears at APPENDIX C.

The jurisdiction of the Court is invoked under 28 USC § 1254(1).

PETITION

The Petition for Writ of Certiorari states the following facts. Your Petitioner, Daniel Leon Carison, operated a tree service company of his own in the Louisville area. Mr.

Carison led a quite life making a good living for himself and not doing a lot of "hell raising" as is so common with this generation. He did however, have one huge fetish. He was a self proclaimed "gun nut." He collected long guns, short guns, big guns, little guns, hand guns, etc. He collected every gun he could get his hand on. Your Petitioner NEVER sold any guns. Petitioner stated that the only reason he acquired his gun dealer license was to enable him to "collect" guns. The district court even differentiated between an accumulation and a collection in order to further violate Petitioner's rights by increasing the offense level.

Now let us review the charges. Count One charged Petitioner with a violation of 18 USC § 922(j) which is a class C felony and states:

> "It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of which constitutes, or which has been shipped or transported in interstate or foreign commerce, knowing or having reasonable cause to believe the firearm or ammunition was stolen."

This was the law at the time of the alleged illegal purchases. As stated in United States v. *Andaverde,* 64 F.3d. 1305 (9th Cir. 1995), "Defendant was not guilty of possession of a stolen weapon under federal weapons statute, where there was no evidence that the stolen shotgun had traveled in interstate commerce after it was stolen." The Ninth Circuit deliberately decided this question as to the grammatical reading of the statute. Citing *United States* v. *Honaker,* 5 F.3d. 160 (6th Cir. 1993), the dissenting opinion of Circuit Judge David Nelson, which quoted *United States* v. *West,* 562 F.2d. 375 (6th Cir. 1977), saying "Our decision in *West, supra,* teaches that words have the former

meaning; a firearm is not a stolen firearm unless it has been stolen by the time the interstate language comes into play."

Now back to the instant case. There has been no evidence submitted to this Court, nor can there be any evidence submitted to this Court which shows your Petitioner **knowingly** received stolen firearms that have moved in interstate commerce. Additionally, there is no evidence that your Petitioner, **at the time of purchase,** knew or had reasonable cause to believe these firearms were stolen.

As for Count 2, which claims your Petitioner received in interstate commerce, a firearm that has had the manufacturer's serial number obliterated, in violation of 18 USC § 922(k). Now let us look at this statute. It states:

> "It shall be unlawful for any person knowingly to transport, ship, or receive in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated or altered and has at any time been shipped or transported in interstate or foreign commerce."

Now let us dissect this statute as it applies to your Petitioner. As Mr. Cox and Mr. Schwartz knew or should have known of the scienter requirement of this statute that requires evidence beyond reasonable doubt and not just inferred evidence, that this Petitioner "knew" that the gun in question had the serial numbers altered or obliterated. As in *Staples* v. *United States,* 114 S.Ct. 1793, 128 L.Ed.2d. 608 (1994), your Petitioner contends that the burden is on the government to prove the scienter requirement that Petitioner "knew" that the serial numbers had been obliterated. Also in support of this is *United States* v.

Tomlinson, 67 F.3d. 508 (4th Cir. 1995) ". . . the mens rea presumption requires knowledge of the facts that make the defendant's conduct illegal . . ." While this case is cited to support our stand on Count 2, it also holds true for Count 1 as well. As in *United States* v. *Fennell,* 53 F.3d. 1926 (D.C. Cir. 1995) states: ". . . we conclude that under 18 USC § 922(k) the government must establish that the defendant knew of the obliteration."

Also, as stated in *United States* v. *Hooker,* 997 F.2d. 67 (5th Cir. 1993), "...any ambiguity created by the language of 18 USC § 922(k) is cleared up by Section 924(a)(1)(B) which provides the penalty for violations of Section 922(k). Section 924(a)(1)(B) applies by its terms only when the defendant 'knowingly violates' Section 922(k).

As to Count 3, violation of 18 USC § 922(m), which requires record keeping as to purchase and sale of firearms, your Petitioner was technically in violation as it pertains to properly maintain required record keeping pursuant to 18 USC § 922(m). However, in searching the licensing statute, 18 USC § 923, one segment stood out. In 18 USC § 923(c) it is stated:

> "Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer or dealer from maintaining or disposing of a personal collection."

This keeps in mind the final part of our argument. As stated earlier, the Court assessed an offense level of twelve (12), pursuant to U.S.S.G. §2K2.1(a)(7). This level was increased by six (6) levels due to applying U.S.S.G. 2K2.l(b)(1)(F) which penalized the Petitioner extra for not viewing Petitioner's collection of guns a "collection." In support of this argument, we must look to the experts for the definition of both "collection" and "accumulation."

> Webster's New World Dictionary, Third College Edition defines:

> Accumulation as an accumulation or being accumulated; collection 2.
>
> Accumulated or collected material; heap 3. The addition to capital or addition to profits.
>
> Balantine's Law Dictionary defines:
>
> Accumulation as "an increase by growth or addition.
>
> Webster's *supra,* defines collection as:
>
> "The act of proces of collecting 2. things collected, specifically as in a hobby [a collection of stamps] 3. a mass or pile; accumulation 4. money collected as in church.
>
> Balantine's *supra,* defines collection as:
>
> "a group of things assembled, as a collection of rocks.

Using definition from any source will show the same results. A collection is an accumulation and an accumulation is a collection. Under no circumstances could a rational trier of fact have concluded anything other than the fact that your Petitioner's guns were a collection as defined by both Webster's and Balantine's.

Your Petitioner was enhanced two levels due to firearm with obliterated serial number. It is obvious by the foregoing evidence that your Petitioner could not be found guilty of 18 USC § 922(k) from previous arguments.

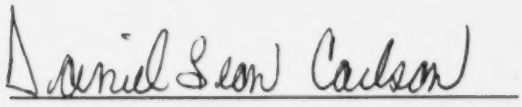
CONCLUSION

This Petitioner has already served his term of imprisonment and is now serving his term of supervised release, therefore, this writ is an attempt to clear Petitioner's record so as to be made "whole" again in relation to his constitutional rights that are guaranteed. These rights include, but are not limited to, freedom to travel, right to vote, right to possess firearms and the right to apply to any government agency for any number of assistance type loans.

It is for the above reasons and all presented herein, that Petitioner prays this Honorable Court will GRANT

this writ of certiorari and cause a Certificate of Appealability to issue from the Sixth Circuit Court of Appeals.

Respectfully submitted,



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